

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 252.

JOHN W. COLLIER, ADMINISTRATOR OF JAMES E.
RANCK, DECEASED, APPELLANT,

vs.

THE UNITED STATES AND THE APACHE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 7, 1898.

(16,811.)

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(16,811.)

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In the Court of Claims.

JAMES E. RANCK
vs.
THE UNITED STATES and APACHE INDIANS. } Indian Depredation. No. 2429.

I.—Petition. Filed June 11, 1891.

To the honorable the Chief Justice and justices of the Court of Claims:

Your petitioner, James E. Ranck, respectfully represents that he is a citizen of the United States, and resident of Mason county, Texas, and that his post-office address is Mason, Mason county, Texas.

That he was the owner of the following-described property, which was taken, used, or destroyed on the 2d day of March, A. D. 1869, on the Rio Azul, near the line of Texas and New Mexico, by the Apache Indians, without just cause or provocation on the part of the owner or the person in charge, to wit:

800 beef cattle, worth \$40 per head.....	\$32,000
1,025 stock cattle, worth \$20 per head.....	20,500
17 horses, worth \$50	850

Total.....	\$53,350
2 Of this property claimant recovered on the 10th day of April, 1869, at Fort Stanton, New Mexico, 35 head of cattle, poor and worn from having been driven, and worth at that time \$12 each	420

Making a net loss of	\$52,930

That said tribe of Indians, at the time said losses occurred, was in amity with the United States; and the said United States has supervisory charge of the said tribe of Indians, and is justly indebted to your petitioner in the sum of \$52,930, the value of said property when taken, used, or destroyed, as aforesaid, by the said Apache Indians.

That a claim for compensation for said property was duly filed in the Department of the Interior on April 17, 1877, for payment, and numbered 1683, but the said sum has never been paid, nor any part thereof.

Your petitioner therefore prays, upon the facts and the law, a judgment against the United States for the said sum of \$52,930, in pursuance of the act of Congress approved March 3, 1891, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations."

JAMES E. RANCK,
By GARLAND & MAY, Attorneys.

GARLAND & MAY,

Attorneys for Claimant,

1209 F St. N. W., Washington, D. C.

DISTRICT OF COLUMBIA, }
 County of Washington, } ss:

Heber J. May, being first duly sworn, says that he is an attorney of the petitioner, who is absent from the city; that no assignment of the claim set forth in the above petition, or any part thereof or any interest therein, has been made, to his knowledge, except as in said petition stated; that the said petitioner is justly entitled to the amount therein claimed from the United States, after allowing all just credits and set-offs; and that all the facts stated in the petition are true as he verily believes.

HEBER J. MAY.

Subscribed and sworn to before me this 10th day of June, A. D. 1891.

JOHN T. MITCHELL,
Notary Public.

[SEAL.]

3 II.—*General Traverse.* *Filed April 27, 1896.*

Comes the assistant attorney general, on behalf of The United States and the defendant Indians, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

E. C. FOSTER,
Acting Assistant Attorney General.

III.—*Suggestion of Death of Claimant and Administrator Substituted.*

Now comes Garland and May, attorneys for claimant, and suggest the death of James E. Ranck, and move the court that J. W. Collier, administrator of the estate of the decedent, may be admitted to prosecute this suit, and duly authenticated copies of the record of the appointment of said J. W. Collier as such administrator are filed herewith.

GARLAND AND MAY,
Attorneys for Claimant.

Filed January 4, 1893.

Allowed.

WILLIAM A. RICHARDSON,
Chief Justice.

4 IV.—*Findings of Fact as Amended and Conclusion of Law.*
Filed January 19, 1898.

JOHN W. COLLIER, Adm'r of James E. Ranck, Deceased, }
 vs. }
 THE UNITED STATES and THE APACHE INDIANS. }

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Finding.

The alleged depredation was committed on or about the 2d day of March, 1869, in the southeastern part of the Territory of New Mexico, by Mescalero Apache Indians, who at the time and place were not in amity with the United States. The property so taken by the Indians was worth more than the sum of three thousand dollars (\$3,000).

The court determines that the Mescalero Indians were not in amity at the time of the depredation from the following official reports, documents, and facts deduced from the testimony of witnesses, which are set forth in the findings:

(Extract from Report of Brevet Major General George W. Getty (Dated October 8, 1869) of the Military Operations in the District of New Mexico Ending June 30, 1869.)

" Fort Craig, New Mexico, situated on the west bank of the Rio Grande, about 180 miles south of Santa Fé, is well located to control important crossings of the river and to prevent incursions northward of the hostile Apaches from the south and southwest. The post would also be important in case of an outbreak of the Navajo

Indians at Fort Wingate; has five sets of officers' quarters, 5 four men's quarters, four store-houses, hospital, cavalry stable, corral, grain-room, bake-house, magazine, and four sets of laundresses' quarters. Commanding officer, Brevet Major General Cuvier Grover, lieutenant colonel 38th U. S. infantry.

Fort Stanton, N. M., situated about 80 miles east of Fort Craig, on a tributary of the Rio Pecos, protects the settlements in its vicinity, and is a good point from which to send out scouting parties against the Mescalero Apaches. * * *

Sixty-two scouts, mostly from the southern posts and operating against the Apache Indians, have been ordered since June 30, 1868. They were composed, in all, of 75 officers and 2,254 men, and marched a total distance of 14,913 miles. This gives the favorable average of about 1 officer, 35 men, and distance marched 250 miles to each scout. The immediate results have been 6 Indians killed, 5 wounded, 3 prisoners, 111 animals captured, and large quantities of provisions, robes, arms, and utensils and other property usually found in Indian camps. Besides these, 3 Indian villages were destroyed. Our loss has been 2 men killed and 2 wounded. This statement does not include the expedition east of Fort Bascom or the Canadian river under Colonel Evans during the winter, of which a special and detailed report has been forwarded.

The great pests of the district have been the Mescalero Apaches, who infest all the southern portions of the Territory and sometimes extend their operations in small parties as far north as Santa Fé.

They live almost entirely from the results of their thieving expeditions, are adventurous and cunning, and probably excel all other Indians in cruelty. The small size of their parties and the

extremely mountainous and wild nature of the country render any successful pursuit a matter of great difficulty and frequently of impossibility.

The scouts mentioned in this report have been mainly directed against these Indians. They number some 450 men, women, and children, but their warriors are usually accompanied in their expeditions by a few Navajoes and Miembres and Mongollon Apaches."

(*Extract from Report of Commissioner of Indian Affairs, 1869, p. 22.*)

"Mescalero Apaches are reported to number 525, and roam over the southeast part of the Territory (New Mexico). Since their escape in 1865 from the Bosque Redondo reservation they have doubtless been guilty of a number of murders and depredations. Before this they were peaceable and friendly. Such is the mountainous character of their country that it is difficult for troops to find them, as it is said in July last a scouting force of 65 men, under an officer, passed through it, and only by accident was a party of seven Apaches discovered. It seems to be the general opinion that these Indians should have a reservation set apart for them near Fort Stanton, in their old home, upon which could also be placed other Apaches. The country contains an abundance of wood, water, and game and is every way suitable."

(*Extracts from Report of Secretary of Interior, 1869, pp. 244-'6.*)

"AGENCY OF THE MESCALERO APACHES,
AGUA NEGRA, N. M., June 30, 1869.

SIR: In compliance with your instructions dated the 27th of May, I have the honor very respectfully to inform you that during the time that has elapsed since my last annual report the Mescalero Apaches under my charge *has* not visited this agency.

It is said that they have been committing some depredations in the vicinity of Fort Stanton, troubling the inhabitants of that frontier, killing people, and stealing property.

There can be no doubt that these Indians, having escaped from the reservation at Bosque Redondo, and being more at large in their own country, may have resorted to depredations against the whites. Their propensity to do evil and the manner in which they live have induced them to commit such wrongs.

The scarcity of means, in the first place, and my not having received instructions from my superiors have prevented me from taking steps to collect these Indians together and warn them from committing any more outrages upon the inhabitants of the country.

For a long time past my recommendations have been very frequent, urging the department to take some measures to establish these Indians upon reservations in their own country.

The experience in the personal character of these Indians and of

all other Indians of the country have shown me that the only way to civilize them is by adopting the system of reservation.

In many instances the Mescalero Apaches have proved to be industrious during the time they were on the reservation at Bosque Redondo, as will be seen by reference to my previous reports, in which I have expressed my opinion in regard to them.

When these Indians were on the reservation they fully showed themselves to be in favor of civilization; all of them were engaged in agricultural pursuits, planting different kinds of seed, and manifesting a profound interest — the ditch (acequia), but also on other things; the men worked cheerfully, and the women assisted them in cleaning up their fields, which were covered with mesquite (a kind of root very difficult to be dug up); they worked with pleasure and lived contented. Their difficulties that I have mentioned in my other reports with the Navajoes compelled them to abandon the reservation and go to their old country. Now they roam at pleasure, committing depredations; this, in my opinion, could be easily stopped by requiring them to cease their lawless acts and settle upon a new reservation. They express a desire to have schools and missionaries, and promise to do anything the Government may require of them for their welfare, provided that the reservation may be established in the place already recommended by me in my previous reports.

It would be well for the Government to take the matter in hand at once to avoid difficulties by delay, for should it finally become necessary to declare war against this tribe they will be ruined, and it might result in their total extermination.

By keeping these Indians, as suggested, they will, with the assistance of their agent, induce all other hostile bands with but little trouble to come upon the reservation. This plan would save the Government an enormous expense, and in the course of a short time they will make a large settlement of civilized people. This is the only way to collect these bands together, which for a long time have been depredating upon the country.

The frequent depredations committed by these Indians upon the whites demand the earnest attention of your department.

I am, very respectfully, your obedient servant,

(Signed)

LORENZO LABADI,
U. S. Indian Agent.

Hon. E. S. Parker, Commissioner of Indian Affairs."

"FORT STANTON, N. M., August 31, 1869.

SIR: I have the honor to submit the following as my annual report of the condition of the Mescalero Apache Indian agency for the period from July 23 to August 31, 1869, inclusive, viz:

I have not, since I entered upon the duties of agent for the Mescalero Apaches (July 23, 1869), seen an Indian of the tribe, but have, I believe, obtained a sufficient amount of information from the late agent, Lorenzo Labadi, Esq., and from the officers of the army sta-

tioned in the Territory to set forth the condition of the tribe as accurately as if I had seen the Indians.

This tribe was settled upon the Bosque Redondo with the Navajoes, but the two tribes could not agree, and the Mescalero Apaches left the reservation in November, 1865, in order to avoid a serious difficulty with the Navajoes. Since leaving the reservation they have been ranging south of Fort Stanton, N. M., sometimes making raids very near the post.

It is a very difficult matter for the troops at the post to find these Indians, on account of the large extent of mountainous country over which they range; but Lieutenant Colonel Frank Stanwood, captain Third U. S. cavalry, left this post with a detachment of 65 men of the Third cavalry on the 25th day of last July on a scouting expedition, passed through the country infested with these Indians, and went as far as Fort Bliss, Texas, and it was by accident that a party of 4 or 5 Indians were seen by the command during the time.

From what I can learn, I believe that these Indians can be brought in and settled upon a reservation if the proper assurance can be given them, and if the Government will give them the same amount of assistance that it gives to other Indians under the same circumstances.

Mr. J. M. Gallegos, late superintendent of Indian affairs for New Mexico, informed me that several Mexican gentlemen called upon him in December, 1868, and stated that they were authorized by the Mescalero Apache tribe to inform him that they desired to settle upon a reservation and live at peace. I believe that they were peaceable before the difficulty occurred between them and the Navajoes, and that they are sincere in their desire for peace.

As it is the policy of the Government to settle all the Indians upon reservations and assist them to live by the pursuits of civilized life, the only thing now necessary to settle this tribe is to furnish the means necessary for their support.

8 The tribe numbers at present 525 souls, and in my report for the month of July, 1869, I submitted for the consideration of the department estimates of goods and subsistence necessary to relieve their present wants.

The military reservation at this point contains about 500 acres of land suitable for agricultural purposes, and I respectfully suggest that the reservation for the tribe be established south of the post. It is the native country of these Indians and contains an abundance of wood, water, game, and pasture, and the Indians can be placed upon the reservation without expense.

Anticipating that these Indians will come in and settle upon a reservation if they are sure of the assistance of the Government, I respectfully suggest that the following sums be appropriated for the purpose of assisting them, viz.

For subsistence for one year, estimated:

One-half ration of beef, 95,812 lbs., at 7 cts.....	\$6,706.84
Full ration of salt, 240 bushels, at \$2.50.....	600.00
Full ration of corn, 4,488 bushels, at \$2.25.....	10,098.00
	—————
	\$17,404.84

For presents, consisting of articles absolutely necessary for the comfort of the Indians, a sufficient amount to purchase and transport to this post the articles on list A, hereto appended, estimated.....	7,000.00
	—————
	\$24,404.84

The condition of the agency is such as not to require any statistical tables to be attached to this report.

Very respectfully, your obedient servant,

A. G. HENNISEE,

First Lieutenant United States Army, Indian Ag't.

Hon. E. S. Parker, Commissioner of Indian Affairs."

Also the following reports:

HEADQUARTERS INDIAN EXPEDITION,

IN CAMP AT CARISO SPRINGS, TEXAS, May 4th, 1869.

A. A. A. G., district of New Mexico, Santa Fé, N. M.

SIR: I have the honor to report for the information of the major general commanding, that I arrived at this place at 10 o'clock a. m. today, and have sent a pack train to Fort Quitman, Texas, for rations to include the last day of this month.

* * * * *

On the 21st day of April, I met Gen. Brooke's command at 10 o'clock p. m., near the mouth of Cañon Sangre Christo. The General informed me that he had just burned an abandoned rancheria, and had picked up some 50 head of cattle left by the Indians. He also informed me he had marched from Fort Stanton on the 9th of April, with a train of wagons and two pieces of artillery, and had established a camp on Pecos river, and from there had marched down the east side of the Guadalupe mountains to where I met him.

* * * * *

From my supply camp I scouted the country along the Delaware creek, north and south, marching some 209 miles, finding no Indians, but numerous abandoned rancherias and evidences of large herds of cattle having been there some months previous; in fact, since leaving the Carnudos, up to this date, I have found no difficulty in securing sufficient beef cattle for the command.

* * * * *

Very respectfully, y'r obed't serv't,

ALEX. MOORE,

Bt. Maj. U. S. A., Capt. 38th Inf'y, Com'dg Exped.

Official.

SAM'L BRECK,

Ass't Adjutant General.

A. G. office, Nov. 19, '90.

9 SAN CARLOS INDIAN AGENCY, A. T., June 1st, 1877.

To the Hon. Commissioner of Indian Affairs, Washington, D. C.

SIR: I have the honor to acknowledge the receipt of office letter (C), dated May 22nd, inclosing papers pertaining to the claim of James E. Ranck, for \$52,850 on account of a depredation alleged to have been committed by Southern Apache Indians in 1869. And in compliance with instructions contained in said letter I have examined the said claim, in accordance with department rules, and find that the depredation alleged was not committed by Southern Apache Indians. The country mentioned in the sworn declaration of applicant was roamed over by Mescalero Apache Indians at the time of the alleged depredation, the Southern Apache Indians confining their depredations to Arizona, western New Mexico, Sonora, and Chihuahua.

I respectfully suggest that the claim be referred to the agent for the Mescalero Apaches, at Fort Stanton, N. M. I return the papers pertaining to the claim herewith.

Very respectfully, your obedient servant,

JOHN P. CLUM,

U. S. Indian Agent,

By M. A. SWEENEY,

Act. Agent and Atty.

Report on the Depredation Claim of James E. Ranck.

Having before me for investigation the claim of James E. Ranck, for depredations alleged to have been committed by Apache Indians, I convened a council of the head men of the Mescaleros, at their agency, on the 4th day of February, 1887. This council was composed of the following persons, to wit: Nautzilla, Peso, José, Treas, Charley, Muchacho Grande, Big Chops, Camisa, Shash, Chivata, Francisco Onero, White Face, Chimal, and Cayatana. The nature of said claim having been fully explained to said *claim*, the members were interrogated individually as to their knowledge, direct or indirect, of the depredation upon which the said claim was based. Each man disclaimed any knowledge whatever of the alleged depredation, speaking both for himself and his band.

Of the credibility of the persons whose affidavits accompany this claim I cannot say anything, as I have been unable to secure the presence of either claimants or their witnesses at this investigation, or persons to establish their trustworthiness.

The values set upon the property alleged to have been stolen are fair and equitable, according to my information as to prices ruling in the locality at that time.

The validity of the claim depends, in my opinion, entirely upon the credibility of the deponents in the case. Taking it for granted that their depositions are all true, I should, of course, recommend the payment of the claim.

Respectfully submitted.

FLETCHER J. COWART,

U. S. Indian Agent.

To the Hon. Commissioner of Indian Affairs.

10 At the time of depredation the cattle were in charge of the employés of the decedent, being driven from Mason county, Texas, to New Mexico, and were taken by the Indians and driven in the direction of Guadeloupe mountains, New Mexico. The number of the Indians at the time of the capture was about fifty. The cattle at the time of the depredation were in charge of eight persons. The attack was made about daylight. The Indians fired on the men in charge and the men took refuge behind the wagons; two of the Indians were taken off as dead.

Conclusion of Law.

Upon the foregoing findings the court decides as a conclusion of law that the petition be dismissed for want of jurisdiction.

BY THE COURT.

Filed January 19, 1898.

11 V.—*Judgment of the Court.*

JOHN W. COLLIER, Administrator of James E. Ranck, Deceased, vs. THE UNITED STATES and THE APACHE INDIANS. } No. 2429. Indian Depredation.

At a Court of Claims held in the city of Washington on the 19th day of January, A. D. 1898, judgment was ordered to be entered as follows:

The court on due consideration of the premises find in favor of the defendants, and do order, adjudge, and decree that the petition of the claimant be dismissed.

BY THE COURT.

12 VI.—Application of Claimant for and Allowance of Appeal.

JOHN W. COLLIER, Administrator of James E. Ranck, Deceased, vs. THE UNITED STATES and THE APACHE INDIANS. } No. 2429. Indian Depredation.

Comes the claimant in the above-entitled cause and prays an appeal to the Supreme Court of the United States from the final judgment rendered by the Court of Claims on the 19th day of January, 1898, dismissing the claimant's petition.

GARLAND AND MAY,
Attorneys for Claimant.

Filed February 17, 1898.

Ordered that the application of the claimant in the above-entitled cause for an appeal be allowed as prayed for.

February 17, 1898.

BY THE COURT.

In the Court of Claims.

JOHN W. COLLIER, Administrator of James E. Ranck, Dec'd,
vs. THE UNITED STATES and THE APACHE INDIANS. } No. 2429. Indian
Depredation.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the final judgment of the court, of the application of claimant for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set
Seal Court of Claims. my hand and affixed the seal of said court,
at Washington, this 5th day of March, 1898.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 16,811. Court of Claims. Term No., 252. John W. Collier, administrator of James E. Ranck, deceased, appellant, vs. The United States and The Apache Indians. Filed March 7th, 1898.

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No. 252.

NOV 14 1898
JAMES H. GARLAND, CLERK

Brief of Garland & May for Appellants

IN THE
Filed Nov. 14, 1898.
Supreme Court of the United States.

No. 252.

October Term, 1898.

JOHN W. COLLIER, Administrator of JAMES E. RANCK,
deceased, Appellant,

v.s.

THE UNITED STATES and APACHE INDIANS.

Appeal from the Court of Claims.

A. H. GARLAND,
HUBER J. MAY,
Attorneys for Appellant.

MOGILL & WALLACE, LAW FIRM, Washington, D. C.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1898.

JOHN W. COLLIER, Administrator of
James E. Ranck, deceased, *Appellant*,
vs.
THE UNITED STATES AND APACHE INDIANS. } No. 252.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT.

This is an Indian depredation claim. The depredation was committed, according to the allegations of the petition, by Apache Indians on the Rio Azul, near the Texas and New Mexico boundary line, on or about March 2, 1869. A claim for compensation for the property taken, cattle and horses, was duly filed in the Interior Department on April 17, 1877. The claim, as presented, amounted to \$52,930, and was pending there at the time of the passage of the act of Congress of March 3, 1891 (26 Stat., 851), which provides "for the adjudication and payment of claims arising from Indian depredations." The claim was then transferred to the Court of Claims. (Rec., p. 1.)

Considerable testimony was taken for the claimant, but the result of it is the meagre finding of the fact set out on the top of page 9 of the Record. All the other findings consist of documents.

The claim was referred, on May 22, 1877, to the United States Indian Agent at San Carlos Agency, Arizona Territory, who reported that the depredation had not been committed by the Southern Apache Indians, inasmuch as those Indians were confining their depredations to Arizona, Western New Mexico, Sonora, and Chihuahua. He suggested that the Mescalero Indians may have committed the depredation. (Rec., p. 8.)

Subsequently, in the course of the proceedings in the Interior Department, the claim was in due course investigated by the United States Indian Agent for the Mescaleros, who convened a council of the head men, to whom the nature of the claim was explained, and the Indians interrogated individually, and each man disclaimed any knowledge of the depredation, both for himself and his band. *This is the only direct testimony in the Record*, and the agent was sufficiently impressed with its truthfulness to recommend the payment of the claim. (Rec., p. 8.)

The Court of Claims upon the documentary evidence set forth in the finding, which consists of general reports of army officers to the War Department, concluded that the depredation was committed by a band of Mescalero Apache Indians, who were not in amity with the United States, and dismissed the petition for want of jurisdiction. (Rec., pp. 3, 9.)

The Apache Indians were in amity with the United States at the time the depredation was committed by treaty and otherwise. (15 Stat., 585.)

The first document (Rec., pp. 3, 4) is an extract from a report of General Getty to the War Department, concerning the military operations in the district of New Mexico, ending June 30, 1869. The report has nothing whatever to do with this claim. The Mescalero Apaches are accused of committing depredations generally in the southern portions of New Mexico, and as far north as Santa Fé.

An extract from the report of the Commissioner of Indian Affairs of 1869, states that the Mescaleros roam over the southeast part of New Mexico, and have committed a number of depredations. The extract shows that these Indians were formerly peaceable, and should be placed on a reservation with *other Apaches*. (Rec., p. 4.)

Another extract from the report of the Commissioner of Indian Affairs for 1869 consists of a report of Lorenzo Labadi, United States Indian Agent. The agent refers to the Mescaleros as having been industrious while they were on their reservation, and says he has repeatedly recommended placing them on a reservation. He also says they expressed a desire for schools and missionaries, etc. He says the Mescaleros "may have resorted to depredations against the whites." (Rec., pp. 4, 5.)

A. G. Hennisse, Lieutenant and Indian Agent, also makes a report as to the condition of the Mescaleros, but admits his report is based on information received from

the late agent, Labadi, and the officers of the army stationed in the Territory. It appears from his report that the Mescaleros left their reservation to avoid serious difficulty with the Navajoes, who were on the same reservation. This agent makes no reference to depredations that were committed by these Indians. (Rec., pp. 5, 7.)

Indian Agent Clum admits the Southern Apaches were committing depredations. (Rec., p. 8.) It is also admitted that other Apaches joined them. (Rec., p. 4.)

The report of Agent Cowart shows the Mescaleros knew nothing about this depredation. (Rec., p. 8.)

The last paragraph of the finding shows something of the manner in which the depredation was committed. (Rec., p. 9.)

Upon the finding of facts two propositions are presented for discussion.

First. Are the documents in the finding, excepting the reports of Agent Clum and Agent Cowart (Rec., p. 8), competent and relevant evidence for any purpose in the case?

Second. If the documents are competent and relevant as evidence, is the finding of fact sufficient to sustain the judgment of the Court of Claims dismissing the petition for want of jurisdiction?

BRIEF.

I.

Our contention is that the extracts from the reports in the finding of facts are not competent and relevant evidence. This objection does not apply, however, to the

reports of Clum and Cowart, which are immediately connected with the claim. (Rec., p. 8.) We are given only fragments of the reports of the military officers, which, of itself, is not a fair way to present the facts.

The provision in section 4 of the statute upon the subject of the competency of this class of evidence is as follows:

"In considering the merits of claims presented to the court, any testimony, affidavits, reports of special agents, or other officers, and such other papers as are now on file in the departments or in the courts, relating to any such claims, shall be considered by the court as competent evidence, and such weight given thereto as, in its judgment, is right and proper."

* * * (26 Stat., 853, ch. 538).

It is provided in section 11 of the act "that all papers, reports, evidence, records, and proceedings now on file or of record in any of the departments or the office of the Secretary of the Senate, or the office of the Clerk of the House of Representatives, or certified copies of the same, relating to any claims authorized to be prosecuted under this act, shall be furnished to the court upon its order or at the request of the Attorney-General." (26 Stat., 854, ch. 538.)

When sections 4 and 11 of the act are considered together it is evident that Congress did not intend to include in their terms such general reports as those of Gen. Getty, the Commissioner of Indian Affairs, or Major Moore. In order to bring the testimony, affidavits, reports of special agents or other officers, and other papers within the statute, they must have some *actual relation* to the claim.

If this is not true, why does the statute provide (par. 4) that such reports or other documents "*relating to any such claims*" shall be considered by the court as competent evidence," etc.

And section 11 confirms the provision in section 4 by providing that such reports, etc., or certified copies thereof, "*relating to any claims authorized to be prosecuted under this act*" shall be furnished," etc.

Some difficulty may be found in fixing the status of the word "relating" as used in the statute. If it is intended to fall within the legal fiction of "relation," then the reports of the officers in the findings, except those of Clum and Cowart, have no relevancy here, and are not competent evidence, inasmuch as they never had any connection directly with the Indian depredation claim in this case, and can not therefore relate back to it. The word does not fall within the other definitions of "relate" or "relating" so as to make the reports, etc., competent evidence, for the reason that the facts stated in such reports, etc., are not allied by connection or otherwise to the claim for which this suit is prosecuted; nor do the statements contained in the extracts from the reports of the officers to which we have made objection refer, relate, or pertain in any manner to the claim. In other words, the use of the words, "*relating to any such claims*," must obviously mean that such claims should be the substantial object or subject of the papers that may be used according to section 4 of the statute.

The contention here is that the provision of the statute limits the use of reports, etc., as evidence to those

having some actual connection with or relation to the claim under consideration.

II.

If the reports in the finding of facts are competent evidence under the statute, are they sufficient to sustain the conclusion of law and dismissal of the petition for want of jurisdiction by the Court of Claims?

For the purpose of showing there is no foundation for the finding that the Mescalero Apache Indians committed the depredation, we will condense all that appears against them in the extracts from the reports of the officers.

Gen. Getty says of these Indians:

"Fort Stanton, N. M., situated about 80 miles east of Fort Craig, on a tributary of the Rio Pecos, protects the settlements in its vicinity, and is a good point from which to send out scouting parties against the Mescalero Indians.

* * * * *

The great pests of the district have been the Mescalero Apaches, who infest all the southern portions of the Territory, and sometimes extend their operations in small parties as far north as Santa Fé.

They live almost entirely from the results of their thieving expeditions, are adventurous and cunning, and probably excel all other Indians in cruelty. The small size of their parties and the extremely mountainous and wild nature of the country render any successful pursuit a matter of great difficulty and frequently of impossibility.

The scouts mentioned in this report have been mainly directed against these Indians. They number some 450 men, women and children, but their

warriors are usually accompanied in their expeditions by a few Navajoes and Miembres and Mungollon Apaches."

The Commissioner of Indian Affairs says :

"Mescalero Apaches are reported to number 525, and roam over the southeast part of the Territory. (New Mexico.) Since their escape in 1866 from the Bosque Redondo reservation they have doubtless been guilty of a number of murders and depredations. Before this they were peaceable and friendly. Such is the mountainous character of their country that it is difficult for troops to find them, as it is said in July last a scouting force of 65 men, under an officer, passed through it, and only by accident was a party of seven Apaches discovered. It seems to be the general opinion that these Indians should have a reservation set apart for them near Fort Stanton, in their old home, upon which could also be placed other Apaches. The country contains an abundance of wood, water, and game, and is every way suitable."

The report of Indian Agent Labadi (Rec., pp. 4, 5), says it is claimed the Mescalero Apaches have been committing depredations in the vicinity of Fort Stanton. (Fort Stanton is about 100 miles northwest of the point on Black River where this depredation was committed.) Labadi does not, it will be observed from his report, give the Mescaleros the bad name that is given to them by General Getty. Nor does the Commissioner of Indian Affairs. (Rec., p. 4.)

Indian Agent Hennissée (Rec., pp. 5, 7) says the Mescaleros sometimes made raids very near Fort Stanton. He pleads for means to place these Indians on a reserva-

tion, where they have expressed a desire to go and live in peace.

Brevet Major Moore makes no reference to the Mescalero Apaches whatever. (Rec., p. 7.)

We have set out above all that is material in fixing the responsibility for the depredation on the Mescalero Indians. The statements in the reports are too general to be evidence against the claimant in this case. Not a specific depredation is pointed out as having been committed by the Mescaleros. The finding is a clear makeshift as an escape from liability on the part of the Apache Indians or the United States.

The Apache Indians, as distinguished from the Mescaleros, were committing depredations at the time along the Rio Grande River, and evidently extending their incursions across that river to the northward. (Rec., p. 3.) These Indians, so far as distance is concerned, could have been charged, according to the finding of facts, with having committed the Ranck depredation upon a presumption as well founded as the presumption made by the Court of Claims against the Mescaleros.

General Getty also states, in his report (Rec., p. 3), that "sixty-two scouts, mostly from the southern posts and operating against the Apache Indians, have been ordered since June 30, 1868."

The Southern Apaches (Rec., p. 8) were committing depredations in Chihuahua and Western New Mexico, and were nearly, if not quite, as close to the place of the Ranck depredation as the Mescaleros, who committed depredations in the vicinity of Fort Stanton. (Rec., p. 4.)

It is contended, on behalf of the appellant, that the conclusion of law of the Court of Claims rests absolutely upon a presumption that the Mescalero Indians committed the depredation, and that presumption itself rests upon a finding of fact that is not sufficient to sustain the presumption or the conclusion of law. The facts so found or stated are not sufficient to support the final judgment of the Court of Claims dismissing the petition of the claimant.

This court will inquire whether the judgment below is supported by the facts found.

Chase *v.* United States, 155 U. S., 489, 500.

Respectfully submitted.

A. H. GARLAND,

HEBER J. MAY,

Attorneys for Appellant.

No. 252.

Brief of Atty. Gen.

Office Supreme Court U. S.
FILED

JAN 7 1899

John
Clark,

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Filed Jan. 7. 1899.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

JOHN W. COLLIER, ADMINISTRATOR OF
James E. Ranck, deceased, appellant,
v.
THE UNITED STATES AND APACHE
Indians. } No. 252.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

JOHN W. COLLIER, ADMINISTRATOR OF
James E. Ranek, deceased, appellant,
v.
THE UNITED STATES AND APACHE
Indians. } No. 252.

BRIEF OF APPELLEES.

The substantial objection of the appellants to the judgment of the Court of Claims dismissing their petition is that the court was not warranted in such judgment by the evidence in the case.

It is submitted that this question is not reviewable by the Supreme Court.

In addition to this assignment of error the appellants contend that documentary evidence establishing the condition of the defendant Indians relative to their status as to amity is not competent evidence.

I.

Appellants, at the bottom of page 2, erroneously state that the identity of the depredating Indians was determined by the general reports of Army officers to the

War Department. To quote the language of counsel, on said page 2 of their brief it is stated :

The Court of Claims, upon documentary evidence set forth in the finding, which consists of general reports of Army officers to the War Department, conclude that the depredation was committed by a band of Mescalero Apache Indians who were not in amity with the United States, and dismissed the petition for want of jurisdiction. (Record, pp. 3-9.)

This shows a total misconception of the findings made by the court. The record does not show that the court found that the depredating Indians were Mescalero Apaches from the extracts following such finding on page 3 of the record.

This finding is in the following words and figures, to wit :

The alleged depredation was committed on or about the second day of March, 1869, in the south-eastern part of the Territory of New Mexico by Mescalero Apache Indians, who, at the time and place, were not in amity with the United States. The property so taken by the Indians was worth more than the sum of three thousand dollars (\$3,000).

The court determines that the Mescalero Apache Indians were not in amity at the time of the depredation from the following official reports, documents, and facts deduced from the testimony of witnesses which are set forth in the findings. * * *

Following these findings are various reports from which the court determines *not that the Mescalero Apache Indians committed the depredation, but that the Mescalero Apache Indians were not in amity with the United States* at the date of the commission of the alleged depredation.

The first finding of the court is a finding of the ultimate fact that the depredation was committed by the Mescalero Apache Indians, which finding was evidently made upon the whole record and without reference to the extracts referred to. The extracts may have entered into the consideration of the question of identity, but it is not stated by the court in such finding that it was made solely upon these extracts. In fact it is not stated by the court upon what facts they find the ultimate fact that the Mescalero Apache Indians were the depredators.

It is insisted that this ultimate fact found by the Court of Claims upon the whole record, which record is not and could not properly be before this court, is not reviewable on appeal.

II.

If this court is authorized to review the finding made by the court upon the fact of the status of the defendant Indians with reference to their condition as to amity, it is submitted that the record offered on appeal is ample to show that the Court of Claims was without jurisdiction to entertain this suit because the Mescalero Apache Indians were not in amity with the United States at the date of the commission of the alleged depredation, and such want of amity appears on the face of the records submitted.

In *Marks v. The United States* (161 U. S. R., 297) this court has adjudicated upon the question of amity, defining the meaning of the word as it appears in the Indian depredation act of March 3, 1891.

The courts say * * *

The word "amity" is not a technical term. It is a word of common use; and such words, when found in the statute, must be given their ordinary meaning, unless there be something in the context which compels a narrow or different scope. Webster defines it, "friendship in a general sense between individuals, societies, or nations; harmony; good understanding, as a treaty of amity and commerce." * * *

The record containing the extracts from the public documents, from pages 3 to 8, shows that the Mescalero Apache Indians at the date of the alleged depredation were not in this state of friendship and good will toward the Government. They had left their reservation in 1865, and on October 8, 1869, Bvt. Maj. Gen. George W. Getty reported that—

The great pests of the district have been the Mescalero Apaches, who infest all the southern portion of the Territory and sometimes extend their operations in small parties as far north as Santa Fe. (Rec., p. 3.)

By this report it also appears that 62 scouts had been sent out against the Apache Indians between June 30, 1868, and October 8, 1869, with the result of 6 Indians being killed, 5 wounded, 3 made prisoners, 111 animals and large quantities of provisions, ropes, arms, and utensils usually found in Indian camps captured. This report on page 4 states that these scouts were mainly directed against the Mescalero Apaches.

The Commissioner of Indian Affairs, on page 4 of the record, states that the Mescalero Apaches escaped from their reservation in 1865, since which time they have

been guilty of a number of murders and depredations. Before their escape from the reservation, he states that they were peaceable and friendly. It is also reported that, by reason of the mountainous character of their country, it was difficult for the troops to find them, showing that they were being operated against by the troops, as stated in General Getty's report *supra*.

Again, on page 4 of the Record, Lorenzo Labadi, United States Indian agent, states that since his last report the Mescalero Apaches have not visited his agency.

Again, on page 5 of the Record, it is stated by the report set forth on said page, that from July 23 to August 31, 1869, the agent had not seen an Indian of the tribe (Mescalero Apaches).

Again, on page 6 of the Record, it is stated that—

It is a very difficult matter for the troops at the post to find these Indians, on account of the large extent of the mountainous country over which they range; but Lieut. Col. Frank Stanwood, captain Third United States Cavalry, left this post with a detachment of 65 men of the Third Cavalry on the 25th day of last July on a scouting expedition, passed through the country infested with these Indians, and went as far as Fort Bliss, Tex., and it was by accident that a party of four or five Indians was seen by the command during the time.

This indicates further military operations against the defendant Indians. On page 7 of the Record will be found the report of Bvt. Maj. Alex. Moore, United States Army, which shows an expedition into the Mescalero country under the command of General Brooke.

Again, on page 8 of the Record, it is stated by Indian Agent John P. Plum that the depredation was committed in the section of country roamed over by the Mescalero Apache Indians.

On page 8 of the Record is found the report of Fletcher J. Cowart, United States Indian Agent, which shows the presentation of the claim to the Apache Indians on the 4th of February, 1887, eight years after the commission of the alleged depredation, at which time the Indians in counsel denied the commission of the depredation. It may be added, parenthetically, that it could hardly be expected of the Indians that they would admit the commission of the offense.

At the top of page 9 of the Record is found the conclusion that the court reached from the testimony in the case, which is as follows:

At the time of the depredation the cattle were in charge of the employees of the decedent, being driven from Mason County, Tex., to New Mexico, and were taken by the Indians and driven in the direction of the Guadalupe Mountains, New Mexico. The number of Indians at the time of the capture was about fifty. The cattle at the time of the depredation were in charge of eight persons. The attack was made by daylight. The Indians fired on the men in charge and the men took refuge behind their wagons. Two of the Indians were taken off as if dead.

Upon these records, including this finding of fact from the testimony in the case, the court found as a conclusion of law that the petition be dismissed for want of jurisdiction.

It is most respectfully submitted that the ultimate fact of the identity of the depredators being determined and not being reviewable by this court, that the conclusion of law reached by the court as to its jurisdiction, or, rather, as to its want of jurisdiction, is fully shown by the documents submitted and by the testimony offered in support of the claim by the claimants in the court below, which showed an engagement between the parties in charge of the cattle and the defendant Indians, numbering about fifty, which number, according to the census of the tribe given by their agent, would represent about the number of warriors the tribe would afford.

Upon these two propositions it is submitted there was no error in the court below.

III.

The question of the amity of the defendant Indians—in fact, the question of amity as a general question on the part of an Indian tribe—can best be determined by the reports of the governmental officials having jurisdiction over this matter. These reports are usually the reports of the Interior Department, including therein the reports of the agents and subagents for the Indians and the reports of the War Department, which generally includes the reports of the army officers in charge of the expeditions against the hostile tribes.

Since jurisdiction was conferred upon the Court of Claims by the act of March 3, 1891, the court has universally looked to these reports to determine the question of amity, which policy has been adopted and followed by

this court. It is most respectfully submitted that this ground of error assigned by appellants is not sound. It is respectfully submitted that the judgment of the Court of Claims dismissing the petition for want of jurisdiction should be affirmed.

Marks v. U. S. et al (161 U. S., 297).

Leighton v. U. S. et al (161 U. S., 291).

Valk v. U. S. et al (168 U. S., 703).

JOHN G. THOMPSON,

Assistant Attorney-General.



COLLIER *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 252. Submitted January 9, 1890.—Decided February 20, 1890.

There is nothing in this case to take it out of the settled rule that the findings of the Court of Claims in an action at law determine all matters of fact.

Marks v. United States, 164 U. S. 297, followed to the point that when a petition, filed in the Court of Claims, alleges that a depredation was committed by an Indian or Indians belonging to a tribe in amity with the

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United States it becomes the duty of that court to inquire as to the truth of that allegation; and if it appears that the tribe, as a tribe, was engaged in actual hostilities with the United States, the judgment of the Court of Claims must be that the allegation of the petition is not sustained, and that the claim is not one within its province to adjudicate.

It was the manifest purpose of Congress, in the act of March 3, 1891, c. 538, to empower the Court of Claims to receive and consider any document on file in the Departments of the Government or in the courts having a bearing upon any material question arising in the consideration of any particular claim for compensation for Indian depredation, the court to allow the documents such weight as they were entitled to have.

THE case is stated in the opinion.

Mr. A. H. Garland and *Mr. Heber J. May* for appellant.

Mr. Assistant Attorney General Thompson for appellees.

MR. JUSTICE WHITE delivered the opinion of the court.

This appeal brings up for review a judgment of the Court of Claims, dismissing, for want of jurisdiction, a claim originally filed in that court by one Ranck, since deceased, to recover for damages alleged to have been sustained on March 2, 1869, by the destruction of property of the claimant by Indians near the line of Texas and Mexico.

The finding of the court is that "The alleged depredation was committed on or about the 2d day of March, 1869, in the southeastern part of the Territory of New Mexico, by Mescalero Apache Indians, who at the time and place were not in amity with the United States." Upon its finding of the ultimate facts thus stated, the court below rested the legal conclusion that it was without jurisdiction of the cause. This court accepts the findings of ultimate fact made by the court below and cannot review them. *Mahan v. United States*, 14 Wall. 109; *Stone v. United States*, 164 U. S. 380. Applying the law to the facts, it is clear that as the Indians by whom the depredation was committed were not in amity, the court correctly decided that it was without jurisdiction. *Marks v. United States*, 161 U. S. 297, followed in *Leighton v. United States*, 161 U. S. 291; *Valk v. United States*, 168 U. S. 703. This legal conclusion was not disputed in the argument at bar;

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but it was contended that this court will, as a matter of law, where the record enables it to do so, determine for itself whether the ultimate facts found below are supported by any evidence whatever, and that it also will determine whether the ultimate facts were solely deduced by the court below from evidence which was wholly illegal. And upon the foregoing legal proposition it is asserted, first, that it is disclosed by the record that there was no evidence whatever tending to show that the depredation was committed by the Mescalero Apache Indians; and, second, that the record also discloses that the conclusion of fact that the Indians committing the depredation were not in amity was solely rested by the court upon certain official reports and documents which were inadmissible. The rule by which these contentions are to be measured is thus stated in *United States v. Clark*, 96 U. S. 37, 40, as follows:

"But we are of opinion that when that court [the Court of Claims] has presented, as part of their findings, what they show to be all the testimony on which they base one of the essential, ultimate facts, which they have also found, and on which their judgment rests, we must, if that testimony is not competent evidence of that fact, reverse the judgment for that reason. For here is, in the very findings of the court, made to support its judgment the evidence that in law that judgment is wrong. And this not on the weight or balance of testimony, nor on any partial view of whether a particular piece of testimony is admissible, but whether, upon the whole of the testimony as presented by the court itself, there is not evidence to support its verdict; that is, its finding of the ultimate fact in question." See also *Stone v. United States, supra*, 383.

Whether the record before us is in such a state as to support either of the contentions above stated, is the question for decision. In so far as the question of the tribe of Indians by whom the depredation was committed, it obviously is not, since there is not therein contained any reference whatever to the evidence upon which the court based its conclusion on this subject. The portion of the record which is relied upon to establish the contrary is the following statement:

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"The court determines that the Mescalero Indians were not in amity at the time of the depredation from the following official reports, documents and facts deduced from the testimony of witnesses which are set forth in the findings."

But the matter thus certified clearly purports only to relate to the evidence from which the court drew its conclusions as to amity, and not to that upon which it based its finding as to the tribe by whom the depredation was committed. It follows, then, that the argument is simply this: That we are to determine that there was no evidence supporting the finding as to the particular tribe committing the depredation, when the record does not disclose and the court has not certified the proof from which its conclusion was drawn. The claim that the record discloses that the finding as to amity rested solely upon certain official reports and documents, finds also its only support in the excerpt from the record just above stated. Whilst it is true the statement certifies that certain reports and official documents were considered by the court in reaching its finding as to the want of amity, it does not state that it was alone based upon these reports, for it says that the determination that the Indians were not in amity at the time of the depredation was likewise drawn from "facts deduced from the testimony of witnesses which are set forth in the findings." Now, whilst the findings contain certain reports and official documents, presumably those referred to in the statement, they do not contain the testimony of any of the witnesses. After reproducing the reports and documents, the record concludes with a mere recapitulation of the result of the testimony of certain witnesses as to the number of Indians by whom the depredation was committed and the circumstances surrounding, that is, the nature of the attack made by the Indians and the conflict which ensued when it was made. It follows that even if the reports and official documents to which the findings refer were legally inadmissible to show want of amity, we could not hold that there was no legal evidence supporting the conclusion that amity did not exist, since all the evidence which the court states is considered on this subject is not in the record. But the

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official reports in question were legally competent on the issue of amity. It is conceded that if competent they were relevant, since it is admitted they tended to establish that the tribe was not in amity when the depredation was committed.

The act of March 3, 1891, c. 538, for the adjudication and payment of claims arising from Indian depredations, 26 Stat. 851, provides in the fourth and eleventh sections as follows:

"In considering the merits of claims presented to the court, any testimony, affidavits, reports of special agents or other officers, and such other papers as are now on file in the departments or in the courts, relating to any such claims, shall be considered by the court as competent evidence, and such weight given thereto as in its judgment is right and proper."

"SEC. 11. That all papers, reports, evidence, records and proceedings now on file or of record in any of the departments, or the office of the secretary of the Senate, or the office of the clerk of the House of Representatives, or certified copies of the same, relating to any claims authorized to be prosecuted under this act, shall be furnished to the court upon its order, or at the request of the Attorney General."

These provisions express the manifest purpose of Congress to empower the Court of Claims to receive and consider any document on file in the Departments of the Government or in the courts, having a bearing upon any material question arising in the consideration of any particular claim for compensation for Indian depredation, the court to allow the documents such weight as they were entitled to have.

There is no merit in the contention that, although documents, within the description of the statute, were relevant to the question of amity, they were nevertheless incompetent, as they did not refer to the particular depredation in question, because the statute only authorizes the consideration of reports, documents, etc., "relating to any such claim." As amity was made by law an essential prerequisite to recover, it follows that evidence bearing on such subject was necessarily evidence relating to the claim under consideration.

Affirmed.